

SUBCHAPTER A : WATER QUALITY PROTECTION ZONES

§216.1. Applicability.

(a) This subchapter applies only to those areas in which one or more water quality protection zones may be designated in accordance with §26.179 of the Texas Water Code.

(b) Except as provided by subsection (g) of this section, nothing in this subchapter shall supersede or interfere with the applicability of water quality measures or regulations adopted by a conservation and reclamation district comprising more than two counties and which apply to the watershed area of a surface lake or surface reservoir that impounds at least 4,000 acre-feet of water.

(c) Except as provided by subsection (g) of this section, a water quality protection zone implementing a water quality plan which meets the requirements of this subchapter shall be presumed to satisfy all other state and local requirements for the protection of water quality, provided that the development in the zone shall comply with all state laws and commission rules regulating water quality which are in effect on the date the zoning is designated, including, but not limited to, this subchapter. For purposes of this subsection, “development” means the nature and extent of the development as originally proposed and “zone” means zone as originally designated. Commission rules in effect on the date the zone is designated shall apply within a water quality protection zone. Applications for amendments to increase the acreage of the zone shall be subject to the rules effective at the time the related application to amend the plan is filed with the commission. The applicability of such rules is limited to only the new area to be added to the zone.

(d) If there is an irreconcilable conflict between the rules in effect at the time the zone is designated and a rule that applies to an area as a result of an amendment application to increase the acreage of the zone, the latter shall control.

(e) The water quality protection provisions of this subchapter apply only to new development in a water quality protection zone.

(f) Ranching and agricultural activities are excluded from the water quality protection provisions of this subchapter.

(g) The commission may require and enforce additional water quality protection measures to comply with mandatory federal water quality requirements, standards, permit provisions, or regulations.

(h) Development in the zone shall comply with all state laws and commission rules regarding water quality that are in effect on the date the zone is originally designated and, as to the added acreage, those laws and rules in effect at the time any acreage is added to expand the original zone.

§216.2. Definitions.

The definitions in §5.001 and §26.001 of the Texas Water Code apply to this subchapter; further the following terms have the following meaning, unless the context clearly indicates otherwise:

Agent - a person or entity authorized by the owners of property located in water quality protection zone to act for them and ensure that a water quality protection plan is implemented pursuant to all applicable commission regulations and state and federal law.

Annual constituent loadings - The sum of constituent mass loadings transported in runoff from a water quality protection zone over a one-year period.

Average annual constituent concentrations - The average flow-weighted constituent concentrations contained in runoff from a water quality protection zone over a period of one year.

Average annual constituent loadings - Average constituent mass loadings computed from annual constituent mass loadings from multiple years.

Background levels of water quality - The average annual loading of water quality constituents in runoff from a water quality protection zone to waterways in the state that existed prior to the commencement of new development within the water quality protection zone calculated using a formula that normalizes loadings to average annual rainfall conditions or the average annual concentrations of water quality constituents in runoff from a water quality protection zone to waterways in the state that existed prior to the commencement of new development within the water quality protection zone.

Best Management Practices - Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are those measures that are reasonable and necessary to achieve a performance standard that protects water quality as determined by studies and other information that are generally relied upon by professionals in the environmental protection field and verified through performance monitoring including, but not limited to, "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters" (EPA/NOAA).

Construction - Fabrication of physical facilities such as buildings, roads, and utility infrastructure.

Contiguous tract - A tract shall be deemed contiguous if all of the parts of the tract are physically adjacent, without regard to easements, rights-of-way, roads, streambeds, and public or quasi-public land, or it is part of an integrated development under common ownership or control.

Designation of water quality protection zone - A designation is comprised of a metes and bounds description of a water quality protection zone, a general description of the proposed land uses within the zone, a water quality plan for the zone, and a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone.

Developed area - Area within a designated water quality protection zone in which development has been completed.

Development - All land modification activity, including the construction of buildings, roads, paved storage areas, parking lots; the application of chemical constituents; the alteration of vegetative cover; land-disturbing construction or human-made change of the land surface, including clearing of vegetative cover; excavating; dredging and filling; grading; contouring; mining; and depositing refuse, waste or fill; or

any other activities which alter or disturb the topographic, hydrologic or geologic characteristics of land. Development shall be considered to be completed when 90% of the planned development is in place. Agricultural and ranching activities are excluded from this definition of development. Activities such as minimal clearing and the installation of underground utilities which create only a temporary potential to adversely impact water quality are not considered to be development for the purposes of the permanent water quality protection requirements specified in §216.6(a) of this rule.

Integrated development - A systematic approach to building or otherwise improving property in accordance with a published master plan. If the proposed zone is comprised of parts that are not physically adjacent, the executive director shall, in determining whether a proposed zone qualifies as an integrated development, consider factors such as:

- (A) distance between the parts of the proposed water quality protection zone;
- (B) relationship between the property parts including common use facilities, common recreational facilities, and common utilities;
- (C) the extent to which runoff from different parts of the zone drains to the same sub-watershed;
- (D) whether the development will be encumbered by a single set of restrictive covenants that provide for the development of the property as a single community;
- (E) whether the parts will be served by a master property owners' association;
- (F) whether all land will be developed under consistent development standards, including architectural control standards, water quality standards, road and street standards, and utility standards;
- (G) whether the parts will be developed under a common name; and
- (H) other factors the executive director may deem necessary for the protection of water quality within the zone.

New development - Development that occurs after the designation of a water quality protection zone.

Phase of development - A stage of development identified in a water quality plan filed with the commission. A phase will be considered completed when 90% of the planned development is in place or when construction has ceased for a period of one year.

Plan - Water quality plan for a water quality protection zone.

Retention - The prevention of the discharge of a given volume of stormwater runoff into waterways.

Undeveloped site - A land area within a water quality protection zone that has not been modified by development.

Water quality plan - A plan meeting all applicable statutory requirements as determined by the executive director of the commission as provided by this chapter.

Water quality protection zone - An area properly designated in accordance with §26.179 of the Texas Water Code and, if applicable, §216.3 of this title (relating to Designation of Water Quality Protection Zones), as follows:

- (A) A contiguous tract of land of at least 1,000 acres that is located within an area subject to and properly designated in accordance with §26.179 of the Texas Water Code, or
- (B) A contiguous tract of land containing less than 1,000 acres but not less than 500 acres that is located within an area subject to and, after prior approval of the commission in the manner

described in §216.3 of this title (relating to Designation of Water Quality Protection Zones), properly designated in accordance with §26.179 of the Texas Water Code.

Waterways - Includes lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the bed and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

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§216.3. Designation of Water Quality Protection Zones.

(a) Zones Containing 500-999 acres of Land. The owner or owners of a contiguous tract comprised of less than 1,000 acres but at least 500 acres of land may submit an application for plan approval to the executive director. After the plan is approved, the owner shall record the designation of the zone in the deed records of the county in which the land is located. The creation of the zone is effective upon deed recordation.

(b) Zones Containing 1,000 acres or more of Land. The owner or owners of a contiguous tract of 1,000 acres or more of land may create a water quality protection zone that will become effective upon recordation of the designation in the deed records of the county in which the land is located.

(c) Notice. Whenever a designation is recorded in the deed records of the county in which the land is located, notice of such filing shall be given to the city clerk of the municipality within whose extraterritorial jurisdiction the zone is located and the clerk of the county in which the property is located. A recorded copy of the water quality protection zone designation shall be filed with the executive director immediately after its recordation with the county clerk, but not later than five working days from the date of such county recordation.

(d) Content of Application. The following shall be included in the application for approval of a water quality plan for a water quality protection zone.

(1) Each application shall specify an agent who is the authorized representative of the owner or owners of the zone. The agent shall accept performance obligations set forth under the water quality plan for the zone; act as the contact person on behalf of the zone; and submit all reports and fees. The owner or owners of the zone shall notify the commission within 30 days of changes with regard to the agent for the zone.

(2) Each application shall contain sworn affidavits from each owner asserting his or her common ownership interest in the entire zone and intention to comply with all plan requirements, and a statement designating the name, address and telephone number of the agent or agents who will be managing the zone.

(3) Each application shall contain a metes and bounds description of the zone.

(4) Each application shall contain a general description of the proposed land uses within the zone.

(5) Each application shall contain a water quality plan for the zone as described in §216.6 of this title (relating to Water Quality Plan).

(6) Each application shall contain a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone.

(7) Payment of the application fee as described in §216.11 of this title (relating to Fee Schedule) shall be accompanied by supporting documentation for the calculation of the fee.

(e) Application Procedures.

(1) An application for plan approval shall be submitted to the executive director for review and approval. The owner or agent shall submit four copies of the application to the Austin Regional Office of the commission to the Attention of: Water Program Manager, TNRCC-Region 11, 1921 Cedar Bend, Suite 150, Austin, Texas 78758.

(2) The water quality plan for a water quality protection zone, including the determination of background levels of water quality, shall be signed and sealed by a registered professional engineer acknowledging that the plan is designed to achieve the water quality protection standard defined in this subchapter.

(3) The review and action on the application for plan approval for a water quality protection zone shall be completed within 120 days of the date it is filed with the commission. Those applications which are found not to be administratively complete as described in §216.3(d) will result in the denial of the water quality plan for the zone. Written notice of the executive director's action on an application for plan approval shall be mailed to the applicant, the affected city, groundwater conservation district, and the appropriate county judge(s), as set out in §216.7(a) of this title (relating to Actions and Notice).

(4) If, prior to the executive director's decision upon an application, the applicant proposes a change to such plan or amendment, the original plan or plan amendment shall be denied. A revised plan or plan amendment shall be submitted to the executive director within thirty days of the denial and no further fee shall be required. The executive director's review and approval of the revised plan or plan amendment shall be completed within 120 days of the date the revised plan or plan amendment is filed with the executive director.

(5) For zones of 1,000 acres or more and all plan amendments, the decision to approve or deny a plan application or application for amendment will be made on the proposed plan or amendment that has been deed recorded.

(6) For zones of 1,000 acres or more, if the water quality plan for the zone is denied by the executive director, the plan ceases to be effective until an appeal is filed in a court of competent jurisdiction, at which time the zone resumes its effectiveness.

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§216.4. Expiration.

A water quality plan shall expire:

- (1) upon denial unless the denial is under appeal to a court of competent jurisdiction;
- (2) upon annexation of the zone by a municipality; or
- (3) upon failure to commence construction within five years of approval of the plan as provided in §216.6(d) of this title (relating to Water Quality Plan).

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§216.5. Agents.

(a) Before a water quality plan for a water quality protection zone may be approved by the commission, the application for plan approval is required to identify one person or entity who will be an agent for the zone and accept performance obligations set forth under the plan for the zone. The agent will implement the plan by the terms of its provisions, prepare and submit annual reports, implement all necessary and appropriate corrective actions and plan amendments, and pay all fees, among other things.

(b) All owners of property within the zone are required to sign a sworn affidavit prior to designation of the zone that they will comply with the plan, take all reasonable efforts to ensure that the agent is implementing the plan and will inform the commission within 30 days of changes with regard to the agent for the zone.

(c) The plan may designate different agents who will manage the zone at different times.

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§216.6. Water Quality Plan.

(a) Water Quality Protection. The water quality plan for a designated water quality protection zone shall be designed and implemented to achieve water quality protection by:

- (1) maintaining background levels of water quality in waterways in a manner described in this subchapter; or

(2) capturing and retaining the first 1.5 inches of rainfall from developed areas in a manner described in this subchapter.

(b) Contents. A water quality plan shall be site-specific, and shall include the components listed in this subchapter. With regard to information necessary to support the water quality plan identified in this subchapter, certain information may be omitted with prior commission authorization which will be made based upon a review of site-specific circumstances.

(1) Determination of Background Levels of Water Quality. A water quality plan seeking to achieve water quality protection by maintaining background levels of water quality through water quality monitoring shall include the following procedures and information:

(A) Site Background Water Quality Data. Data sufficient to establish background levels of water quality shall be collected from one or more water quality monitoring sites located within the designated zone.

(i) Water quality monitoring sites shall be located so as to be representative of runoff from all areas within the water quality protection zone, including developed and undeveloped areas. Water quality monitoring of runoff from developed areas shall be representative of areas where management measures are implemented to a reasonably feasible and practical extent and therefore representative of water quality conditions that can be reasonably attained in developed areas. Water quality monitoring of undeveloped areas shall be representative of conditions prior to any development activity. Factors including, but not limited to, the variability in the contributory area, soils, topography, and vegetation, may be used to determine the representativeness of the water quality monitoring sites. Sufficient supporting information including drainage area, storm water flow, land uses, best management practices, and technical analyses shall be submitted to establish the representativeness of the data.

(ii) Information relevant to the determination of both average annual mass loadings and average annual constituent concentrations at sites located within the water quality protection zone shall be submitted for the following constituents: total suspended solids, total nitrogen, total phosphorus, chemical oxygen demand and biochemical oxygen demand. Sufficient supporting information including sampling locations, the types of samples collected, sampling schedule, sampling procedures, sampling equipment, laboratory analytical methods, analytical results, computational methods, and data quality assurance records shall be submitted to establish the adequacy of the data.

(iii) Water quality monitoring at each site shall consist of a minimum of one stage (flow) composite sample for at least four storm events of one-half inch or more of rainfall that occur at least one month from the previous rainfall event of one half inch or more. Water quality monitoring at each site shall be of sufficient frequency to be an accurate measure of annual average constituent loadings or average annual constituent concentrations at that site. Sufficient supporting information such as statistical analyses, literature citations, or program references shall be submitted to establish the completeness and reliability of the data.

(iv) If sufficient data collected from water quality monitoring sites located within the area designated as a water quality protection zone are not available, a water quality monitoring plan to collect such data shall be submitted. The water quality monitoring plan shall specify procedures, methods, and information that are consistent with the requirements stated in this section. Calculation procedures as described in subparagraph (B) of this paragraph will be followed during the interim period until sufficient data are collected from sites located within the water quality protection zone.

(B) Calculation of Background Levels of Water Quality. If sufficient data collected from water quality monitoring sites located within the area designated as a water quality protection zone are not available, calculations performed and certified by a registered professional engineer utilizing the concepts and data from the National Urban Runoff Program (NURP) Study or other studies approved by the executive director for the constituents resulting from average annual runoff may be used to establish background levels of water quality until sufficient data are collected from sites located within the water quality protection zone.

(i) Concepts and data for developed areas shall be representative of areas where management measures are implemented to a reasonably feasible and practical extent and therefore representative of water quality conditions that can be reasonably attained in developed areas. Concepts and data for undeveloped areas shall accurately represent conditions prior to any development activity. Sufficient supporting information including land uses, data quality, flow volumes to estimate constituent loadings, constituent concentrations, and watershed characteristics shall be submitted as necessary to establish the accuracy of the calculations and representativeness of the results.

(ii) Studies proposed to support the establishment of background levels of water quality shall be specified and copies provided for review by the executive director prior to the submission of a water quality plan or plan amendment. A water quality plan or plan amendment may rely only upon studies approved by the executive director prior to submission of the plan or amendment. Review of studies proposed to establish background levels of water quality shall be separate from the executive director's review of a water quality plan or plan amendment.

(2) Water Quality Performance Monitoring. Agents for plans that seek to achieve water quality protection of developed areas by maintaining background levels of water quality through water quality monitoring shall monitor water quality at four or more locations representative of where runoff from the water quality protection zone enters waterways.

(A) Water quality performance monitoring shall be conducted for the following constituents: total suspended solids, total nitrogen, total phosphorus, chemical oxygen demand, and biochemical oxygen demand. If water quality monitoring indicates that additional constituents are leaving the property, then additional monitoring and remedial actions shall be required.

(B) A water quality monitoring plan for collecting performance data shall be included in the water quality plan. The water quality monitoring plan shall include project design, data quality objectives, proposed sampling locations, the types of samples to be collected, sampling schedule, sampling procedures, sampling equipment, laboratory analytical methods and data quality assurance provisions, computational methods, and reporting requirements.

(C) Water quality performance monitoring sites shall be located so as to be representative of annual constituent loadings or average annual constituent concentrations from all areas within the water quality protection zone. Water quality performance monitoring sites shall be located at points representative of where runoff from the zone enters waterways. Sufficient supporting information including drainage area, storm flows, land uses, loading calculations, and statistical analyses shall be submitted to establish the accuracy and representativeness of the proposed data collection program.

(D) Water quality performance monitoring shall consist of a minimum of one stage (flow) composite sample for at least four storm events per year of one-half inch or more of rainfall that occur at least one month from the previous rainfall event of one-half inch or more. Water quality monitoring at each site shall be of a frequency that will give an accurate measure of annual average constituent loadings or average annual constituent concentrations at that site. Complete copies of sufficient supporting information such as statistical analyses, literature citations, or program references shall be submitted to establish the sufficiency of the proposed data collection program.

(E) Water quality performance monitoring shall occur for three consecutive years after each phase of development is completed within the water quality protection zone. Each new phase of development, including associated best management practices and amendments, if applicable, to a water quality plan for an existing phase of development, will require water quality performance monitoring for a three-year period. Zones and phases of development within a zone that have previously satisfied the performance monitoring requirements of this rule are not required to perform additional performance monitoring unless the water quality plan for the zone is amended in a manner that affects these areas. If agents can show good cause, the executive director may determine that water quality performance monitoring is required for less than a three-year period.

(F) The results of the water quality performance monitoring shall be the basis for calculating annual constituent loadings or average annual constituent concentrations from the water quality protection zone. These values shall be compared with the average annual constituent loading values or average annual constituent concentration values determined to represent background levels of water quality to evaluate compliance of the water quality plan with the water quality protection requirements of this subchapter. These results shall be reported to the executive director as described in §216.9 of this title (relating to Corrective Actions).

(3) Storm Water Capture and Retention. Water quality plans seeking to achieve water quality protection by capturing and retaining runoff from the first 1.5 inches of rainfall from developed areas within the water quality protection zone shall not be required to conduct water quality monitoring, as described in paragraphs (1) and (2) of this subsection.

(A) Supporting information including drainage area, storm water flows, land uses, determination of runoff coefficients, capture volume calculations, water management plan, facility design criteria, and facility maintenance plans shall be submitted and shall establish the adequacy of the proposed water quality protection measures to capture and retain the required volume of rainfall runoff. Design criteria shall demonstrate the capture and retention of the required volume of rainfall. Maintenance provisions shall ensure the continued performance of management facilities.

(B) Water quality plans shall include provisions for maintaining rainfall records including rainfall volumes, facility water levels and discharge volumes; water reuse records including reuse volumes and reuse locations; facility maintenance records; and other supporting information and record keeping provisions approved by the executive director.

(C) Storm water reuse plans shall specify design and operational criteria for drawing down storm water in retention facilities. Storm water reuse plans shall include provisions for using best management practices including the siting of irrigation areas and irrigation methods.

(4) Best Management Practices. Water quality plans shall include a description of all the best management practices to be utilized to protect water quality in the water quality protection zone during and after construction, an estimate of the pollutant removal efficiencies of these best management practices, and the procedures to be used to monitor and maintain these best management practices. Only those management practices described in the approved water quality plan shall be used. If other practices are intended to be used, the agent of the zone shall report such changes to the executive director in the annual reporting for the zone. Upon request and with sufficient supporting data, design criteria or other similar information may be accepted in lieu of design specifications for best management practices.

(A) Best management practices specified in the approved water quality plan shall be required for all areas under development within a water quality protection zone to prevent and/or control the erosion of sediments from the area during and after construction. Written notification shall be provided to the executive director no later than 48 hours prior to the initiation of construction in a water quality protection zone to allow the executive director an opportunity to perform inspections of the construction activities.

(B) Records shall be kept by the agents and furnished to the executive director upon request. Records shall be sufficient to verify consistent use of best management practices, including operational and maintenance activities.

(5) Stream erosion. Water quality plans shall include a description of all measures to be taken to avoid or minimize changes in which water may enter a waterway as a result of construction and development that would increase flashing, create stronger flow and stream velocity, increase the duration of flow or otherwise increase instream erosion and further water quality degradation. This description shall include pre- and post-development flow information or estimates.

(c) Review, Approval, and Amendment Procedures.

(1) The executive director shall approve the water quality plan for a water quality protection zone unless the executive director finds that the implementation of the proposed plan will not reasonably maintain background levels of water quality, the plan would not maintain water quality sufficient to protect existing and designated uses of affected surface water, or the plan is in conflict with state or federal law.

(2) A water quality plan may be amended from time to time by the filing of a request for amendment signed by the agent with the executive director and filed in the deed records of the county where

the original plan is filed. All such proposed amendments shall be submitted to the executive director for review and approval on the same basis as the original application for plan approval.

(A) The executive director shall either initiate or require an amendment by the agent to enforce additional water quality protection measures instituted by the commission to comply with mandatory federal water quality requirements, standards, antidegradation policies, permit provisions and regulations, or other mandatory requirements under other federal law.

(B) Commission rules in effect on the date the zoning is designated shall continue to apply within a water quality protection zone or those portions of a zone for which an amendment application has been filed, except that applications for amendments to increase the acreage of the zone shall be subject to the rules effective at the time the related application to amend the plan is filed and the applicability of such rules is limited to only the new area to be added to the zone. The water quality plan for a water quality protection zone shall be amended if:

- (i) the acreage specified in the plan is increased;
- (ii) the total impervious cover specified in the plan is increased beyond the original designed specifications for achieving water quality protection;
- (iii) the method of water quality protection is changed; or
- (iv) the method of determining performance compliance is changed.

(C) If the performance monitoring and best management practices indicate that background levels were not maintained during the previous year, as described in §216.9 of this title, amendments to the plan may be required for future phases of development in the zone and to improve operational and maintenance practices in existing phases to the extent reasonably feasible and practical.

(3) Review and action on an application for approval of a water quality plan or plan amendment shall be performed by the agency staff who are responsible for reviewing pollution abatement plans in the county where the water quality protection zone is located. If the executive director approves the plan, notice of the approval shall be mailed as provided in §216.7(a) of this title (relating to Actions and Notice).

(4) A plan or plan amendment is approved if 120 days from the date of submittal has passed without comment from the executive director. In such event, no notice beyond what is required by §216.7(a) of this title is necessary.

(5) The executive director shall deny the application for approval of a water quality plan or plan amendment that does not meet the requirements set forth in §26.179 of the Texas Water Code and this subchapter.

(A) For zones less than 1,000 acres, notice of the denial of a water quality plan, including the reason for the determination, shall be mailed to the applicant.

(B) For zones of 1,000 acres or more, notice of the denial of a water quality plan, including the reason for the determination, shall be mailed to the applicant, county judge, director of each groundwater conservation district, and the affected municipality as provided in §216.7(a) of this title. The applicant shall record the notice of denial in the deed records of the county in which the land is located, unless the applicant appeals the denial in a court of competent jurisdiction.

(C) For plan amendments, notice of the denial of the amendment, including the reason for the determination, shall be mailed to the applicant, county judge, director of each groundwater conservation district, and the affected municipality as provided in §216.7(a) of this title.

(d) Effective Date and Term. The water quality plan, or amendment thereto, shall be effective upon recordation of the plan or the amendment in the deed records of the county in which the land is located. For proposed plans regarding zones of 1,000 acres or more, if the executive director denies the application and the applicant appeals the decision, the plan shall remain in effect for as long as the appeal continues. For proposed plans regarding zones of less than 1,000 acres which require prior approval by the executive director, if the executive director denies the application, the proposed plan does not become effective until the appeal is won by the applicant. The plan shall be a covenant running with the land. As such, if a plan is proposed for a zone having more than one owner, the owners must have a common ownership interest in the zone. The effectiveness of a plan or amendment shall also terminate if commencement of construction does not occur within five years of the effective date of the plan.

(e) Effect of the Plan. A water quality protection zone in which a water quality plan has been approved by the executive director shall be presumed to satisfy all other state and local requirements for the protection of water quality, provided that development in the zone complies with all applicable state laws and commission rules regulating water quality which are in effect on the date the zone is originally designated and those in effect at the time any acreage is added to expand the original zone, as to the added acreage.

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§216.7. Actions and Notice.

(a) The public notice requirements of this section govern applications for approval of plans and plan amendments.

(1) The executive director shall mail notice of the receipt of the application to the county judge of each county in which property included in the application is located, the director of each groundwater conservation district in which property included in the application is located and the municipality in whose extraterritorial jurisdiction the zone is located.

(2) Each notice of an application shall specify both the name, affiliation, address, and telephone number of the applicant and of the agency employee who may be reached to obtain more

information about the application. The notice shall include a copy of the map or other description or location of the subject property which is filed with the application.

(3) The executive director shall mail a copy of the letter of approval or disapproval of any application to the applicant, to the county judge of each county in which property included in the request is located, the director of each groundwater conservation district in which property included in the application is located, and to the municipality in whose extraterritorial jurisdiction the zone is located.

(b) Public Comment. Any person may provide to the executive director written comments on any application for approval of a water quality plan or plan amendment. The executive director shall review any written comments received within 30 days after the notice is mailed and may use the information contained therein in considering action on the application.

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§216.8. Annual Reporting Requirements.

(a) An annual report shall be submitted to the executive director no later than April 1 of each calendar year during the development of the property and for three consecutive years after each phase of development is completed within the water quality protection zone. Annual reports are not required for zones or phases of development within a zone that have satisfied the water quality protection and performance monitoring requirements of the rule unless the water quality plan for these areas is amended subsequent to these requirements being satisfied. Reports for individual areas within a zone shall be consolidated into a single annual report. The executive director shall review the annual report. The annual report shall be either a technical or operational report or combination of both dependent upon the method used to achieve water quality protection as described in §216.6 of this title (relating to Water Quality Plans). Information pertaining to best management practices being used shall be included in both types of reports. Certain information pertaining to the annual report may be omitted with prior commission authorization which will be made based upon a consideration of site-specific circumstances.

(1) Technical reports for water quality protection plans that achieve water quality by maintaining background levels of water quality as described in this subchapter shall include information sufficient to establish that background levels of water quality were maintained in the water quality protection zone during the previous year. This information shall include water quality monitoring, best management practices, record keeping, water quality protection assessment, and any corrective actions taken. Reporting on water quality monitoring shall include the results of monitoring runoff from the water quality protection zone to determine background water quality levels and monitoring the performance of the water quality plan. Information on water quality monitoring reported to the executive director shall include sampling locations, sampling procedures, analytical results, results of quality assurance provisions, and calculation of average annual concentrations or calculation of annual constituent loadings from the water quality protection zone to waterways.

(2) Operational reports for water quality protection plans that achieve water quality by capturing and retaining the first 1.5 inches of rainfall from developed areas as described in this subchapter

shall include for each retention facility records of rainfall dates and volumes; retention facility daily water levels and discharge volume, while holding water; stormwater reuse records including locations and volumes reused; and facility maintenance data.

(3) Information pertaining to best management practices reported to the executive director shall include a description of the type and location of all best management practices utilized to protect water quality in the water quality protection zone, an assessment of the performance of each best management practice and documentation of maintenance activities performed on each structural control measure. For rainfall retention facilities the report shall include records of rainfall dates and depths; retention facility daily water levels and discharge volume, while holding water; storm water reuse records, including locations and volumes; and facility maintenance data.

(b) The annual report shall include an assessment of the water quality plan for the water quality protection zone in meeting the water quality protection requirements of this subchapter. If the water quality protection assessment indicates that the water quality plan for the water quality protection zone failed to meet the requirements as described in §216.9 of this title (relating to Corrective Actions) proposed corrective actions shall be included in the annual report.

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§216.9. Corrective Actions.

(a) Water quality protection zones shall be considered to be in compliance with the requirements of this subchapter if constituent mass loadings or average annual concentrations from the water quality protection zone after development are comparable to background levels of water quality established for the zone as described in §216.6(b)(1) of this title (relating to Water Quality Plan). Water quality protection plans may be presumed to have maintained comparable, pre-development background levels of water quality if constituent mass loadings are not greater than 10% above background levels or if average annual concentrations are not greater than background levels. Such presumption is rebuttable. Water quality protection zones shall be out of compliance and require corrective action if constituent mass loadings from the water quality protection zone after development are greater than 10% above the background levels established for the zone or if average annual constituent concentrations are greater than background.

(b) If the performance monitoring and best management practices indicate that background levels were not maintained or that the required volume of rainfall was not retained during the previous year, the agent for the water quality protection zone shall:

(1) modify the water quality plan for future phases of development in the water quality protection zone to the extent reasonably feasible and practical; and

(2) modify operational and maintenance practices in existing phases of the water quality protection zone to the extent reasonably feasible and practical.

(c) The extent to which water quality protection cannot be achieved within existing phases of development shall be considered in future phases of development within the water quality protection zone. Applications for amendments to plans for future phases of development within the water quality protection zone will be denied if they do not consider failures of water quality plans in existing phases of development to achieve water quality protection as prescribed in this subchapter.

Adopted October 23, 1996

Effective November 25, 1996

§216.10. Enforcement.

Failure by any person or entity to comply with any provision of this subchapter or an approved water quality protection plan shall subject the violator to the prosecution of enforcement action and liability for penalties as provided in Chapter 26 of the Texas Water Code and the commission's enforcement rules contained in Chapter 337 of this title. Nothing in this section affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance or to recover damages.

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§216.11. Fee Schedule.

(a) Application Fee. For applications for approval of water quality plans and water quality plan amendments, a non-refundable application fee shall be assessed based upon the total acreage of new development proposed in the zone or portion of the zone under consideration by the proposed water quality plan or amendment. Application fees shall be assessed at a rate of \$25 per acre of proposed new development. Payment of the application fee must be submitted at the time that an application is made to the commission. The payment of the application fee shall be accompanied by documentation of how the application fee was calculated. An application shall be denied if not accompanied by the appropriate fee.

(b) Annual Fee. For each water quality protection zone, an annual compliance and inspection fee shall be assessed based upon the total acreage of development that has occurred since the designation of the zone and which exists within the water quality protection zone at the end of each calendar year. Annual fees shall not be required for zones or portions of zones which are not required to submit an annual report as described in §216.8 of this title (relating to Annual Reporting Requirements). Annual fees shall be assessed at a rate of \$10 per acre of development. Payment of the annual fee shall be made at the time of the submittal of the annual report. The payment of the annual fee shall be accompanied by documentation of how the annual fee was calculated.

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